

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 129
FINAL READING

Introduced by Schrock, 38

Read first time January 4, 2001

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Department of Natural Resources; to
2 amend section 46-685, Reissue Revised Statutes of
3 Nebraska, and sections 2-1588, 2-1594, and 46-233,
4 Revised Statutes Supplement, 2000; to change provisions
5 relating to the Nebraska Resources Development Fund,
6 applications for the diversion of water, and appeals
7 under the Industrial Ground Water Regulatory Act; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-1588, Revised Statutes Supplement,
2 2000, is amended to read:

3 2-1588. (1) Any money in the Nebraska Resources
4 Development Fund may be allocated by the commission in accordance
5 with sections 2-1586 to 2-1595 for utilization by the department,
6 by any state office, agency, board, or commission, or by any
7 political subdivision of the State of Nebraska which has the
8 authority to develop the state's water and related land resources.
9 Such money may be allocated in the form of grants or loans or for
10 acquiring state interests in water and related land resources
11 programs and projects undertaken within the state. The allocation
12 of funds to a program or project in one form shall not of itself
13 preclude additional allocations in the same or any other form to
14 the same program or project. Funds may also be allocated to assist
15 natural resources districts in the preparation of management plans
16 as provided in section 46-656.12. Funds so allocated shall not be
17 subject to sections 2-1589 to 2-1595.

18 ~~(2) Only projects with estimated total costs of less than~~
19 ~~seventeen million dollars, which shall not include operation and~~
20 ~~maintenance costs, shall be eligible for assistance from the~~
21 ~~Nebraska Resources Development Fund. If cost overruns during~~
22 ~~project construction cause the cost of a project to exceed~~
23 ~~seventeen million dollars, the department may continue to~~
24 ~~participate in the project and the commission may allocate~~
25 ~~additional funds to ensure project completion.~~

26 ~~(3)~~ No project, including all related phases, segments,
27 parts, or divisions, shall receive more than ten million dollars
28 from the fund. ~~(4)~~ On July 1, 1994, and each year thereafter, the

1 director shall adjust the project cost and payment limitation of
2 this ~~section~~ subsection by an amount equal to the average
3 percentage change in the federal Department of Commerce, Bureau of
4 the Census, Composite Construction Cost Index for the prior three
5 years.

6 ~~(5)~~ (3) Prior to September 1 of each even-numbered year,
7 a biennial report shall be made to the Governor and the Clerk of
8 the Legislature describing the work accomplished by the use of such
9 development fund during the immediately preceding two-year period.
10 The report shall include a complete financial statement. Each
11 member of the Legislature shall receive a copy of such report upon
12 making a request for it to the director.

13 Sec. 2. Section 2-1594, Revised Statutes Supplement,
14 2000, is amended to read:

15 2-1594. The director may recommend approval of and the
16 commission may approve grants or loans for program or project costs
17 or acquisition of interests in projects if after investigation and
18 evaluation the director finds that:

19 (1) The plan does not conflict with any existing Nebraska
20 state land plan;

21 (2) The proposed program or project is economically and
22 financially feasible based upon standards adopted by the commission
23 pursuant to sections 2-1586 to 2-1595;

24 (3) The plan for development of the proposed program or
25 project is satisfactory;

26 (4) The plan of development minimizes any adverse impacts
27 on the natural environment;

28 (5) The applicant is qualified, responsible, and legally

1 capable of carrying out the program or project;

2 (6) In the case of a loan, the borrower has demonstrated
3 the ability to repay the loan and there is assurance of adequate
4 operation, maintenance, and replacement during the repayment life
5 of the project;

6 (7) The plan considers other plans and programs of the
7 state in accordance with section 84-135 and resources development
8 plans of the political subdivisions of the state; and

9 (8) The money required from the Nebraska Resources
10 Development Fund is available.

11 The director and staff of the department shall carry out
12 their powers and duties under sections 2-1586 to 2-1595
13 independently of and without prejudice to their powers and duties
14 under other provisions of law.

15 Sec. 3. Section 46-233, Revised Statutes Supplement,
16 2000, is amended to read:

17 46-233. (1) The United States and every person intending
18 to appropriate any of the public waters of the State of Nebraska
19 shall, before (a) commencing the construction, enlargement, or
20 extension of any works for such purpose, (b) performing any work in
21 connection with such construction, enlargement, or extension, or
22 (c) taking any water from any constructed works, make an
23 application to the department for a permit to make such
24 appropriation. A permit may be obtained to appropriate public
25 waters for intentional underground water storage and recovery of
26 such water. A public water supplier may make application to
27 appropriate public waters for induced ground water recharge.

28 (2) The application shall be upon a form prescribed and

1 furnished by the department without cost to an applicant. Such
2 application shall set forth (a) the name and post office address of
3 the applicant, (b) the source from which such appropriation shall
4 be made, (c) the amount of the appropriation desired, as nearly as
5 it may be estimated, (d) the location of any proposed work in
6 connection with the appropriation, (e) the estimated time required
7 for its completion, which estimated time shall include the period
8 required for the construction of ditches, pumps, and other features
9 or devices, (f) the time estimated at which the application of the
10 water for the beneficial purposes shall be made, which time shall
11 be limited to a reasonable time following the estimated time of
12 completion of the work when prosecuted with diligence, (g) the
13 purpose for which water is to be applied and (i) if for induced
14 ground water recharge by a public water supplier, a statement of
15 the times of the year when and location along a stream where flows
16 for induced ground water recharge are proposed and (ii) if for
17 irrigation, a description of the land to be irrigated by the water
18 and the amount, and (h) such facts and supporting documentation as
19 are required by the department which shall include, but not be
20 limited to, the depth of all wells, the extent of the underlying
21 aquifer, the expected rate of recharge, the minimum flow or flows
22 necessary to sustain the well field throughout the reach
23 identified, and the period of time that a well field would continue
24 to meet minimal essential needs of the public water supplier when
25 there is no flow as those factors relate to and are part of an
26 evaluation of pertinent hydrologic relationships.

27 A public water supplier making application for induced
28 ground water recharge may submit with its application a statement

1 of the amount of induced ground water recharge water which the
2 public water supplier presently uses as well as the amount of
3 induced ground water recharge water it anticipates using in the
4 next twenty-five-year period. Such statement shall also quantify
5 the total amount of water the public water supplier presently uses
6 from the well field as well as the total amount of water it
7 anticipates using from the well field in the next twenty-five-year
8 period.

9 (3) Upon receipt of an application containing the
10 information set forth in this section, the department shall (a)
11 make a record of the receipt of the application, (b) cause the
12 application to be recorded in its office, and (c) make a careful
13 examination of the application to ascertain whether it sets forth
14 all the facts necessary to enable the department to determine the
15 nature and amount of the proposed appropriation. If such an
16 examination shows the application in any way defective, it shall be
17 returned to the applicant for correction, with a statement of the
18 correction required, within ninety days after its receipt. Ninety
19 days shall be allowed for the refiling of the application, and in
20 default of such refiling, the application shall stand dismissed.
21 Except as provided in subsection (4) of this section, if so filed
22 and corrected as required within such time, the application shall,
23 upon being accepted and allowed, take priority as of the date of
24 the original filing, subject to compliance with the future
25 provisions of the law and the rules and regulations thereunder.
26 During the pendency of any application or upon its approval, the
27 department, upon proper authorization and request of the applicant,
28 may assign the application a later priority date.

1 (4) For public water supplier wells in existence on
2 September 9, 1993, the priority date assigned to an application for
3 induced ground water recharge made by a public water supplier shall
4 be:

5 (a) June 27, 1963, for water supply wells and facilities
6 constructed and placed in service on or before June 27, 1963;

7 (b) January 1, 1970, for water supply wells and
8 facilities constructed and placed in service on or after June 28,
9 1963, and on or before December 31, 1969;

10 (c) January 1, 1980, for water supply wells and
11 facilities constructed and placed in service on or after January 1,
12 1970, and on or before December 31, 1979;

13 (d) January 1, 1990, for water supply wells and
14 facilities constructed and placed in service on or after January 1,
15 1980, and on or before December 31, 1989; and

16 (e) January 1, 1993, for water supply wells and
17 facilities constructed and placed in service on or after January 1,
18 1990, and on or before September 9, 1993.

19 (5) Prior to taking action on an application for induced
20 ground water recharge, the director shall publish notice of such
21 application at the applicant's expense at least once each week for
22 three consecutive weeks in a newspaper of general circulation in
23 the area of the stream segment and also in a newspaper of statewide
24 circulation. The notice shall state that any person having an
25 interest may, in writing, object to the application. Any such
26 objection shall be filed with the department within two weeks after
27 the final publication of the notice.

28 (6) After the director has accepted the application made

1 under subsection (2) of this section as a completed application and
2 published notice as required under subsection (5) of this section,
3 the director shall, if he or she determines that a hearing is
4 necessary, set a time and place for a public hearing on the
5 application. The hearing shall be held within reasonable proximity
6 to the area in which the wells are or would be located. At the
7 hearing the applicant shall present all hydrological data and other
8 evidence supporting its application. All interested parties shall
9 be allowed to testify and present evidence relative to the
10 application.

11 (7) An unapproved application pending on August 26, 1983,
12 may be amended to include appropriation for intentional underground
13 water storage and recovery of such water.

14 (8) Application may be made to the department for a
15 temporary permit to appropriate water. The same standards for
16 granting a permanent appropriation shall apply for granting such
17 temporary permit except when the temporary permit is for road
18 construction or other public use construction and the amount of
19 water requested is less than ten acre-feet in total volume. For
20 temporary permits for public-use construction, the applicant shall
21 include on the application the location of the diversion, the
22 location of use, a description of the project, the amount of water
23 requested, and the person to contact. Temporary permits for
24 public-use construction and for less than ten acre-feet in total
25 volume may be granted without any determination of unappropriated
26 water and shall be considered to be in the public interest. The
27 requirement of filing a map or plans with the application for a
28 temporary permit may be waived at the discretion of the director.

1 In granting a temporary permit, the director shall specify a date
2 on which the right to appropriate water under the permit shall
3 expire. Under no circumstances shall such date be longer than one
4 calendar year ~~from~~ after the date the temporary permit was granted.
5 Temporary permits shall be administered during times of shortage
6 based on priority. The right to appropriate water shall
7 automatically terminate on the date specified by the director on
8 the temporary permit without further action by the department.

9 (9) Water may be diverted from any stream, reservoir, or
10 canal by any fire department or emergency response services for the
11 purpose of extinguishing a fire in progress in an emergency without
12 obtaining a permit from the department. The installation of a dry
13 well for this purpose is allowed without the prior permission of
14 the department, but the department shall be informed of any such
15 installation, its location, and the party responsible for its
16 installation and maintenance within thirty days after the
17 installation.

18 Sec. 4. Section 46-685, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 46-685. Any affected person aggrieved by any order
21 issued or final decision made by the director pursuant to the
22 Industrial Ground Water Regulatory Act may appeal the order, ~~and~~
23 ~~the appeal shall be in accordance with the Administrative Procedure~~
24 ~~Act. As used in this section, the term affected person shall mean~~
25 to the Court of Appeals. For purposes of this section, affected
26 person means the applicant for a permit which is the subject of the
27 director's order or final decision and any owner of an estate or
28 interest in or concerning land or water whose interest is or may be

1 impacted in a direct and significant manner by the director's order
2 or final decision.

3 Sec. 5. Original section 46-685, Reissue Revised
4 Statutes of Nebraska, and sections 2-1588, 2-1594, and 46-233,
5 Revised Statutes Supplement, 2000, are repealed.